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Supreme Court of the United States

OCTOBER TERM, 1970

No. 1871

DELLA DAVIS, THEODORE MARKOWITZ, and JACK GULLO,

Petitioners,

—against—

THE NEWS, *et al.*,

Respondents.

REPLY BRIEF FOR PETITIONERS

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REPLY BRIEF FOR PETITIONERS

Though respondents assert (Brief, p. 3) that The News denied that it ever fixed or sought to fix the resale price, it fails to point to any part of the record below containing such a denial. Since the factual allegations as to The News' attempts to fix the resale price[1] were undenied, we have requested the clerk possessed of the record to certify it, and to provide for its transmission to this court.

[1] These will be found at Doc. 23, Markowitz affidavit, p. 7 (see "Independent Home Delivery Agreement" annexed thereto at p. 1 thereof); Davis affidavit, p. 5; Gullo affidavit, pp. 2-3. The News admitted it fixed "a stipulated retail price". Doc. 29, p. 4.

pursuant to Rule 21(1). (We have sent a copy of the request for certification and transmission to the attorney for respondents.)

Petitioners' motion for summary judgment sought the relief requested in the complaint,[2] which included injunctive relief,[3] respondents to the contrary (p. 5) notwithstanding. Nor do respondents explain why granting of summary judgment would not avoid the need for a trial, though respondents concede that petitioners "are in a substantially identical posture" as the other plaintiffs (*ibid.*). Nor do respondents explain their contention that petitioners are now "faced with the possibility of an order of dismissal for want of prosecution" (*ibid*); in fact, the case was placed on the trial calendar on February 11, 1971, the District Court on February 4, 1971 having extended petitioners' time for such action to February 14, 1971, and having denied respondents' request for an order of dismissal.

CONCLUSION

This Court should grant certiorari, and the judgment below should be reversed.

Respectfully submitted,

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[2] Doc. 23.

[3] Doc. 1, p. 20.